

## CHAPTER 4

# Safeguarding of U.S. National Interests in the Maritime Environment

## 4.1 INTRODUCTION

This final chapter of Part I -- Law of Peacetime Naval Operations -- examines the broad principles of international law that govern the conduct of nations in protecting their interests at sea during time of peace. *As noted in the preface, this publication provides general information, is not directive, and does not supersede guidance issued by the commanders of the combatant commands, and in particular any guidance they may issue that delineates the circumstances and limitations under which the forces under their command will initiate and/or continue engagement with other forces encountered.*

Historically, international law governing the use of force between nations has been divided into rules applicable in peacetime and rules applicable in time of war.<sup>1</sup> In recent years, however, the concepts of both "war" and "peace" have become blurred and no longer lend themselves to clear definition.<sup>2</sup> Consequently, it is not always possible to try to draw neat distinctions between the two. Full scale hostilities continue to break out around the world, but few are accompanied by a formal declaration of war.<sup>3</sup> At the same time, the spectrum of armed conflict has widened and become increasingly complex.<sup>4</sup> At one end of that spectrum is total nuclear war; at the other, insurgencies and state-sponsored terrorism.<sup>5</sup> For the purposes of this publication, however, the conduct of armed hostilities involving

---

<sup>1</sup> 2 Grotius, *De Jure Belli Ac Pacis* 832 (Kelsey, transl. 1925).

<sup>2</sup> McDougal & Feliciano 7-9.

<sup>3</sup> A number of reasons have been advanced as to why nations conduct hostilities without a formal declaration of war: (1) a desire to avoid being branded as aggressors and later being compelled to pay reparations; (2) a desire to avoid triggering the sanctions and peace enforcement provisions of Chapters VI and VII of the U.N. Charter; (3) the "outlawry" of war by art. 2 of both the Kellogg-Briand Pact of 1928 and the U.N. Charter of 1945; (4) the post-World War II war crimes trials in Nuremberg and Tokyo; (5) the fear of embargo on war supplies under national legislation of neutral countries; and (6) the fear held by an attacked weaker nation of widening localized hostilities. Stone 311. *See also* von Glahn, *Law Among Nations* 712-715 (6th ed. 1992); and paragraph 7.1 and note 6 (p. 7-1).

<sup>4</sup> Kidron & Smith, *The War Atlas: Armed Conflict--Armed Peace* (1983); McDougal & Feliciano 97-120.

<sup>5</sup> Terry, *Countering State-Sponsored Terrorism: A Law-Policy Analysis*, 36 *Nav. L. Rev.* 159 (1986); Terry, *An Appraisal of Lawful Military Response to State-Sponsored Terrorism*, *Nav. War Coll. Rev.*, May-June 1986, at 59; Sofaer, *Terrorism, The Law, and the National Defense*, 126 *Mil. L. Rev.* 89 (1989); and Joyner, *In Search of an Anti-Terrorism Policy: Lessons from the Reagan Era*, 11 *Terrorism* 29 (1988). *See also* U.N.G.A. Res. A/49/60, *Measures to Eliminate International Terrorism*, 17 Feb. 1995, *reprinted in* 10 *Terrorism/Documents of International and Local Control* (Levie ed. 1996) at 13.

U.S. forces, irrespective of character, intensity, or duration, is addressed in Part II -- Law of Naval Warfare.

**4.1.1 Charter of the United Nations.** Article 2, paragraph 3, of the Charter of the United Nations<sup>6</sup> provides that:

*All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.*

Article 2, paragraph 4, provides that:

*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*<sup>7</sup>

In combination, these two provisions establish the fundamental principle of modern international law that nations will not use force or the threat of force to impose their will on other nations or to otherwise resolve their international differences.

Under Chapter VI of the Charter, the Security Council has a number of measures short of the use of force available to it to facilitate the peaceful settlement of disputes. If, however, the dispute constitutes a threat to the peace, breach of the peace, or act of aggression, Article 39 of the Charter provides:

*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*<sup>8</sup>

---

<sup>6</sup> Charter of the United Nations, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, as amended in 1963 (16 U.S.T. 1134, T.I.A.S. 5857), 1965 (19 U.S.T. 5450, T.I.A.S. 6529) and 1971 (24 U.S.T. 2225, T.I.A.S. 7739) *reprinted in* AFP 110-20 at 5-2.1. As of 1 November 1997, 186 nations were members of the United Nations. The few nations not members of the United Nations include Kiribati, Nauru, Switzerland, Tonga, and Tuvalu.

<sup>7</sup> The purposes of the U.N. Charter are set forth in art. 1. They include:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.

<sup>8</sup> The key provisions of the Charter relating to the role of the Security Council in the maintenance of international peace and security are as follows:

(continued...)

---

<sup>8</sup>(...continued)

#### CHAPTER V. *The Security Council*

##### Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf. . . .

##### Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

#### CHAPTER VII. *Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression*

##### Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

##### Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communications, and the severance of diplomatic relations.

##### Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

##### Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. . . .

##### Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

##### Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

(continued...)

Such decisions of the Security Council are implemented under Article 41 or Article 42 of the Charter. Article 41 provides:

*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members . . . to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*

Article 42 provides that:

*Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members. . . .*

---

<sup>8</sup>(...continued)

#### Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. . . .

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. . . .

#### Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.

#### Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

The members of the United Nations have not yet been able to conclude agreements in accordance with art. 43 and related Charter provisions. Instead, the United Nations, acting through the Secretary General, has from time to time requested members to voluntarily constitute emergency international U.N. peacekeeping forces as the need arose. In this way, the United Nations has sent peacekeeping forces to trouble spots around the world on 46 occasions. *See Annex A4-1 (p. 4-17) for a current listing of all U.N. peacekeeping operations since 1947. See U.N., The Blue Helmets: A Review of United Nations Peace-keeping (1985); New Zealand Ministry of Foreign Affairs, United Nations Handbook (1991); and Fact Sheet: UN Peace-keeping Operations, U.S. Dep't of State Dispatch, Sept. 30, 1991, at 722. See also Bowett, United Nations Forces (1964); Boyd, United Nations Peace-Keeping Operations: A Military and Political Appraisal (1971); Siekmann, Basic Documents on United Nations and Related Peace-Keeping Forces (1985), and Daniel & Hayes, Securing Observance of UN Mandates through the Employment of Military Forces, Strategic Research Department Report 3-95, Nav. War Coll. (1995); Daniel & Hayes, Beyond Traditional Peacekeeping (1995); Nordquist, What Color Helmet?: Reforming Security Council Peacekeeping Mandates, The Newport Papers, No. 12, U.S. Nav. War Coll. 1997. The U.N. Dep't of Peacekeeping maintains a useful website at [WWW.UN.ORG/DEPTS/DPKO/](http://WWW.UN.ORG/DEPTS/DPKO/).*

These provisions do not, however, extinguish a nation's right of individual and collective self-defense. Article 51 of the Charter provides, that:

*Nothing in the . . . Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member . . . until the Security Council has taken measures necessary to maintain international peace and security. . . .*<sup>9</sup>

---

<sup>9</sup> With the exception of the Korean War (*see* Stone at 228-37) and various peacekeeping activities (*see* note 8) armed forces have not been assigned to U.N. Command. Until August 1990, the veto power exercised by the permanent members of the Security Council prevented the Council from being able to carry out effectively, or in the manner contemplated by the framers of the Charter, its role in the maintenance of international peace and security. As a result, member nations have relied upon their inherent right of individual and collective self-defense to deter aggression and maintain international peace and security. The Security Council's authorization to use force to expel Iraq from Kuwait is recounted in Walker, *The Crisis over Kuwait*, August 1990-February 1991, 1991 Duke J. Int'l L. 25; and Moore, *Crisis in the Gulf* (1992). Self-defense is discussed in paragraph 4.3.2 (p. 4-10). Nations continue to act in their own self-interest in a horizontally structured world in which sovereignty plays an extremely important role. Accordingly, recourse to individual and collective self-defense, as reflected in art. 51 of the Charter, has become the norm. Secretary of State John Foster Dulles, in testifying before the Senate Committee on Foreign Relations on the Mutual Defense Treaty with Korea (Hearings, 83d Cong., 2d Sess., 13 Jan. 1954, at 21), explained: "All of the security treaties which we have made have been conceived of as falling under Article 51." The full text of that art. provides:

#### Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

Secretary Dulles testified further that:

[I]n the main, the arrangement that we have made has been under article 51, which is one of broad and not necessarily regional scope, because the article which deals with regional associations [article 53], as such, has a provision that no forcible action shall be taken under those regional agreements except with the consent of the Security Council, and in view of the Soviet veto power in the Security Council, it would result, if you operated directly under that regional-pact clause, you would not have the right to resort to force or use force except with the consent of the Soviet Union.

"Regional arrangements" are specifically addressed in articles 52 and 53 of the Charter:

#### Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations. . . .

#### Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council. . . .

(continued...)

The following paragraphs discuss some of the measures that nations, acting in conformity with the Charter of the United Nations, may take in pursuing and protecting their national interests during peacetime.

## 4.2 NONMILITARY MEASURES

**4.2.1 Diplomatic.** As contemplated by the United Nations Charter, nations generally rely on peaceful means to resolve their differences and to protect their interests. Diplomatic measures include all those political actions taken by one nation to influence the behavior of other nations within the framework of international law. They may involve negotiation, conciliation or mediation, and may be cooperative or coercive (e.g., severing of diplomatic relations).<sup>10</sup> The behavior of an offending nation may be curbed by appeals to world public opinion as in the General Assembly, or, if their misconduct endangers the maintenance of international peace and security, by bringing the issue before the Security Council. Ordinarily, however, differences that arise between nations are resolved or accommodated through the normal day-to-day, give-and-take of international diplomacy. The key point is that disputes between the U.S. and other nations arising out of conflicting interests are normally addressed and resolved through diplomatic channels and do not involve resort to the threat or use of force.<sup>11</sup>

---

<sup>9</sup>(...continued)

Secretary of State Rusk testified before the Senate Preparedness Subcommittee on 25 August 1966:

The United Nations has not been able to deal effectively with all threats to the peace, nor will it be able to do so as long as certain of its members believe they must continue to compromise between their professed desire for peace and their short range interest in achieving greater power or place in the world. . . . It was recognized from the outset, however, that the United Nations might not prove able by itself to carry the full burden of collective security. The Charter explicitly provides for the existence of regional organizations, such as the Organization of American States, which would deal with problems of international peace and security in their respective areas. It also explicitly recognizes the inherent right of both individual and collective self-defense.

Consistently with the United Nations Charter, we [the United States] have entered into multilateral and bilateral treaty arrangements with more than 40 countries on 5 continents.

*Quoted in U.S. Cong. House Foreign Affairs Comm., Collective Defense Treaties, with maps, Text of Treaties, A Chronology, Status of Forces Agreements, and Comparative Charts, 91st Cong., 1st Sess., 15-17 (Comm. Print 1969).*

The United States has entered into several mutual defense treaties that are currently in force. The NATO and Rio Treaties provide that an attack on one member nation is an attack on all and each will assist in meeting the attack. The ANZUS, Philippine, Japanese, Korean, and SEATO Treaties provide that an armed attack on any party would endanger its own peace and safety and that each party will act to meet the common danger "in accordance with its constitutional processes."

<sup>10</sup> 2 Restatement (Third), sec. 905, Comments & Reporters' Notes.

<sup>11</sup> Under the U.S. Constitution, the president is responsible for the conduct of U.S. foreign policy. In overseas areas, the president principally exercises that responsibility through the chief U.S. diplomatic and consular representative to the country concerned, also known as the chief of mission. The chief of mission is required, under the direction of the president, to exercise "full responsibility for the direction, coordination, and supervision of all Government employees in (continued...)"

**4.2.2 Economic.** Nations often utilize economic measures to influence the actions of others. The granting or withholding of "most favored nation" status to another country is an often used measure of economic policy. Similarly, trade agreements, loans, concessionary credit arrangements and other aid, and investment opportunity are among the many economic measures that nations extend, or may withhold, as their national interests dictate.<sup>12</sup> Examples of the coercive use of economic measures to curb or otherwise seek to influence the conduct of other nations include the suspension of U.S. grain sales and the embargo on the transfer of U.S. technology to the offending nation,<sup>13</sup> boycott of oil and other export

---

<sup>11</sup>(...continued)

that country (except for employees under the command of a United States area military commander)," to keep fully and currently informed with respect to "all activities and operations of the Government within that country," and to ensure that all government employees in that country (except for employees under the command of a U.S. area military commander) "comply fully with all applicable directives of the chief of mission." Further, any U.S. government agency having employees in a foreign country is required to "keep the chief of mission to that country fully and currently informed with respect to all activities and operations of its employees in that country," and to "insure that all of its employees (except for employees under the command of a United States area military commander) comply fully with all applicable directives of the chief of mission." 22 U.S.C. sec. 3927 (1994). This requirement is included in each presidential letter of instruction to chiefs of mission. That letter currently (1994) includes the following:

As Commander in Chief, I retain authority over United States Armed Forces. On my behalf you have responsibility for the direction, coordination, supervision, and safety, including security from terrorism, of all Defense Department personnel on official duty [in (country)/at (international organization)], except those personnel under the command of a U.S. area military commander. You and such commanders must keep each other currently informed and cooperate on all matters of mutual interest. Any differences that cannot be resolved in the field should be reported by you to the Secretary of State; area military commanders should report to the Secretary of Defense.

An extended version of President Clinton's letter of instruction to chiefs of mission is at Annex A4-2 (p. 4-21). Under 10 U.S.C. sec. 162(a)(4) (1994) "[e]xcept as otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to a unified combatant command shall be assigned to, and under the command of, the commander of that command."

These requirements are implemented for deployed naval forces in U.S. Navy Regulations, 1990. Art. 0911 provides that the senior officer present in a deployed naval force, insofar as possible, shall preserve close relations with the diplomatic and consular representatives of the United States. Art. 0912 also provides that in the absence of a diplomatic or consular representative of the United States, the senior officer present in a foreign country has authority, among other things, to communicate or remonstrate with foreign civil authorities as may be necessary. Further, art. 0914 provides that "[O]n occasions when injury to the United States or to citizens thereof is committed or threatened in violation of the principles of international law or in violation of rights existing under a treaty or other international agreement, the senior officer present shall consult with the diplomatic or consular representatives of the United States, if possible, and shall take such action as is demanded by the gravity of the situation." See paragraph 4.3.2.2 and accompanying notes (p. 4-14) for a discussion of actions to be taken by U.S. military commanders in such circumstances.

On the matter of requests for asylum, see paragraph 3.3 (p. 3-4).

<sup>12</sup> See 12 Whiteman 311-21, 2 Restatement (Third), sec. 905 Comment f at 382, and Reporters' Note 8, at 300-01 for discussions of retorsion (unfriendly but lawful acts not involving the use of force in response to objectionable acts of another nation), retaliation and reprisal.

<sup>13</sup> The United States took these actions, among others, in its initial response to the December 25, 1979, invasion of Afghanistan by the Soviet Union. Presidential Address to the Nation, 4 January 1980, Dep't St. Bull., Jan. 1980, at B. This  
(continued...)

products from the offending nation,<sup>14</sup> suspension of "most favored nation" status, and the assertion of other economic sanctions.<sup>15</sup>

**4.2.3 Judicial.** Nations may also seek judicial resolution of their peacetime disputes, both in national courts and before international tribunals. A nation or its citizens may bring a legal action against another nation in its own national courts, provided the court has jurisdiction over the matter in controversy (such as where the action is directed against property of the foreign nation located within the territorial jurisdiction of the court) and provided the foreign nation does not interpose a valid claim of sovereign immunity. Similarly, a nation or its citizens may bring a legal action against another nation in the latter's courts, or in the courts of a third nation, provided jurisdiction can be found and sovereign immunity is not interposed.<sup>16</sup>

Nations may also submit their disputes to the International Court of Justice for resolution. Article 92 of the United Nations Charter establishes the International Court of Justice as the principal judicial organ of the United Nations. No nation may bring another before the Court unless the latter nation first consents. That consent can be general and given beforehand or can be given in regard to a specific controversy. Nations also have the option of submitting their disputes to ad hoc or other established tribunals.<sup>17</sup>

---

<sup>13</sup>(...continued)

embargo was lifted in April 1981. Dep't St. Bull., Oct. 1982, at 42. Similar actions were taken by the United States in December 1981, in response to Soviet-inspired repression in Poland. Dep't St. Bull., Feb. 1982, at 8.

<sup>14</sup> The United States took these actions against Libya in response to the continuing pattern of Libyan activity to promote instability and terrorism which violates accepted international norms of behavior. Exec. Order No. 12,538, 3 C.F.R. 395-96 (1986); Proclamation No. 5141, 3 C.F.R. 143-44 (1984); Proclamation No. 4907, 3 C.F.R. 21-22 (1983) (these presidential documents are *reprinted in* 19 U.S.C. sec. 1862 note (Supp. III 1985)).

<sup>15</sup> The United States took such actions against Nicaragua on 1 May 1985, Dep't St. Bull., July 1985, at 74-75, under the International Emergency Economic Powers Act of 1977, 50 U.S.C. sec. 1701 *et seq.* (1982) and other statutory authority. *See also* Terry, The Iranian Hostages Crisis: International Law and United States Policy, 32 JAG J. 31, 53-56 (1982). The United States' unilateral economic reaction to Iraq's invasion of Kuwait on 2 August 1990 involved the freezing of Iraqi and Kuwaiti assets by Executive Orders 12722-23, 3 C.F.R. 294-96 (1991). More recently, sanctions have been imposed on Cuba (*see, e.g.* 22 U.S.C. sec. 6005 (1996)) and Bosnia (*see* U.N.S.C. Res. 757 (30 May 1992)).

<sup>16</sup> On sovereign immunity *see* DA Pam 27-161-1, at chap. 5; Franck & Glennon, Foreign Relations and National Security Law: Cases, Materials and Simulations 214-26 (1987); Brownlie, Principles of Public International Law 322-45 (4th ed. 1990). The United States has waived its sovereign immunity in certain types of cases. *See, e.g.,* the Public Vessels Act, 46 U.S.C. sec. 781 *et seq.*, the Suits in Admiralty Act, 46 U.S.C. sec. 741 *et seq.*, and the Federal Tort Claims Act, 28 U.S.C. sec. 2671 *et seq.* The United States respects assertions of sovereign immunity by foreign sovereigns. Foreign Immunities Act of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (1976) (codified as amended at 28 U.S.C. secs. 1330, 1332, 1391, 1441, 1602 *et seq.* (1994)).

<sup>17</sup> For a comprehensive analysis of the International Court of Justice and a discussion of major cases brought before it, *see* Rosenne, The World Court: What it is and how it works (5th ed. 1995). *See also* paragraph 10.2.1, note 1 (p. 10-1) for a discussion of the I.C.J. 8 July 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*.



### 4.3 MILITARY MEASURES

The mission of U.S. military forces is to deter armed attack against the United States across the range of military operations, defeat an armed attack should deterrence fail, and prevent or neutralize hostile efforts to intimidate or coerce the United States by the threat or use of armed force or terrorist actions.<sup>18</sup> In order to deter armed attack, U.S. military forces must be both capable and ready, and must be perceived to be so by potential aggressors. Equally important is the perception of other nations that, should the need arise, the U.S. has the will to use its forces in individual or collective self-defense.<sup>19</sup>

**4.3.1 Naval Presence.** U.S. naval forces constitute a key and unique element of our national military capability. The mobility of forces operating at sea combined with the versatility of naval force composition -- from units operating individually to multi-battle group formations -- provide the National Command Authorities<sup>20</sup> with the flexibility to tailor U.S. military presence as circumstances may require.

Naval presence, whether as a showing of the flag during port visits or as forces deployed in response to contingencies or crises, can be tailored to exert the precise influence best suited to U.S. interests. Depending upon the magnitude and immediacy of the problem, naval forces may be positioned near areas of potential discord as a show of force or as a symbolic expression of support and concern. Unlike land-based forces, naval forces may be so employed without political entanglement and without the necessity of seeking littoral nation consent. So long as they remain in international waters and international airspace, U.S. warships and military aircraft enjoy the full spectrum of the high seas freedoms of navigation and overflight, including the right to conduct naval maneuvers, subject only to the requirement to observe international standards of safety, to recognize the rights of other ships and aircraft that may be encountered, and to issue NOTAMs and NOTMARs<sup>21</sup> as the circumstances may require. Deployment of a carrier battle group into the vicinity of areas of tension and augmentation of U.S. naval forces to deter interference with U.S. commercial shipping in an area of armed conflict provide graphic illustrations of the use of U.S. naval forces in peacetime to deter violations of international law and to protect U.S. flag shipping.<sup>22</sup>

---

<sup>18</sup> See National Security Strategy of the United States, "A National Security of Engagement and Enlargement" The White House, February 1995, at 1-12.

<sup>19</sup> See National Military Strategy, "A Strategy of Flexible and Selective Engagement," the Pentagon, 1995 at 8-16.

<sup>20</sup> The term "National Command Authorities" is defined as "The President and the Secretary of Defense or their duly deputized alternates or successors. Commonly referred to as NCA." Joint Pub. 1-02.

<sup>21</sup> See paragraph 2.4.3.1 (p. 2-22) regarding the promulgation of NOTAMs and NOTMARs to declare warning areas in international waters and international airspace.

<sup>22</sup> U.S. Navy, Naval Doctrine Publication 1, "Naval Warfare" (1994) at 20-1; Watkins, The Maritime Strategy, U.S. Naval Inst. Proc. Supp., Jan. 1986, at 7-8; Neutze, Bluejacket Diplomacy: A Juridical Examination of Naval Forces in Support of United States Foreign Policy, 32 JAG J. 81, 83 (1982).

**4.3.2 The Right of Self-Defense.** The Charter of the United Nations recognizes that all nations enjoy the inherent<sup>23</sup> right of individual and collective self-defense<sup>24</sup> against armed attack.<sup>25</sup> U.S. doctrine on self-defense, set forth in the JCS Standing Rules of Engagement for U.S. Forces, provides that the use of force in self-defense against armed attack, or the threat of imminent armed attack, rests upon two elements:

1. Necessity -- The requirement that a use of force be in response to a hostile act or demonstration of hostile intent.<sup>26</sup>
2. Proportionality -- The requirement that the use of force be in all circumstances limited in intensity, duration, and scope to that which is reasonably required to counter the attack or threat of attack and to ensure the continued safety of U.S. forces.<sup>27</sup>

---

<sup>23</sup> The "inherent" right of self-defense refers to the right of self-defense as it existed in customary international law when the UN Charter was written. *See* Brierly, *The Law of Nations* 416-21 (6th ed. 1963); Stone, at 244; von Glahn, *Law Among Nations* 129-33 (6th ed. 1992); Harlow, *The Legal Use of Force ... Short of War*, U.S. Naval Inst. Proc., Nov. 1966, at 89; Fairley, *State Actors, Humanitarian Intervention and International Law: Reopening Pandora's Box*, 10 Ga. J. Int'l & Comp. L. 29 (1980); Bowett, *Self-Defense in International Law* (1958). *Compare* Randelzhofer, Article 51, in *The Charter of the United Nations, A Commentary* 661-78 (Simma ed. 1994).

<sup>24</sup> *See* 2 Restatement (Third), sec. 905. Collective self-defense is considered in paragraph 7.2.2 (p. 7-5).

<sup>25</sup> While the literal English language of art. 51 limits self-defense to cases where "armed attack occurs," State practice such as in the case of the 1962 Cuban Quarantine (*see* paragraph 4.3.2, note 31 (p. 4-13)) has generally recognized that "armed aggression" rather than "armed attack" justifies the resort to self-defense; this position is supported by the equally authentic French text of art. 51: "agression armee." *See* Brierly and Randelzhofer, both at note 23. Anticipatory self-defense is discussed in paragraph 4.3.2.1 (p. 4-13). *See also* Dinstein, *War, Aggression and Self-Defense* 187-91 (2d ed. 1994).

<sup>26</sup> *See* SROE, para. 5d at Annex A4-3 (p. 4-25). 2 Restatement (Third), sec. 905(1)(a) & Comment 3, at 387.

<sup>27</sup> *See* SROE, para. 5d at Annex A4-3 (p. 4-25). 2 Restatement (Third), sec. 905(1)(b) & Reporters' Note 3, at 388-89. *See also* Randelzhofer at 667 for a discussion of the principle of proportionality (note 23). U.S. Navy Regulations, 1990, art. 0915, addressing the legality of resort to the use of force against a foreign nation, reflects these principles:

1. The use of force in time of peace by United States naval personnel against another nation or against anyone within the territories thereof is illegal except as an act of self-defense. Naval personnel have a right of self-defense against hostile acts and hostile intent (imminent threat to use force). This right includes defending themselves, their subunits and, when appropriate, defending U.S. citizens, their property and U.S. commercial assets in the vicinity.

2. The conditions calling for the application of the right of self-defense cannot be precisely defined beforehand, but must be left to the sound judgment of responsible naval personnel who are to perform their duties in this respect with all possible care and forbearance. The use of force must be exercised only as a last resort, and then only to the extent which is absolutely necessary to accomplish the end required.

3. Force must never be used with a view to inflicting unlawful punishment for acts already committed.

Customary international law has long recognized that there are circumstances during time of peace when nations must resort to the use of armed force to protect their national interests against unlawful or otherwise hostile actions by other nations.<sup>28</sup> A number of legal concepts have evolved over the years to sanction the limited use of armed forces in such circumstances (e.g., intervention,<sup>29</sup> embargo,<sup>30</sup> maritime quarantine). To the extent that

---

<sup>28</sup> See Schachter, *Self-Defense and the Rule of Law*, 83 Am. J. Int'l L. 259 (1989); Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* (1985).

<sup>29</sup> While difficult to define precisely, intervention is generally recognized in international law as at least including the use of force which results in the interference by one nation in matters under the exclusive jurisdiction of another nation, for instance, interference in its domestic or foreign affairs. It is also sometimes referred to as interference with the sovereignty of another nation. Intervention frequently involves the nonpermissive entry into the territory of another nation. Any action constituting substantial interference with or harassment of a foreign private or public vessel on the high seas may be considered as an impairment of the foreign nation's sovereignty.

Every nation has the obligation under international law to respect the sovereignty of every other nation. A violation of that sovereignty by intervention is therefore a violation of international law unless justified by a specific rule to the contrary, such as the rights of self-defense and of humanitarian intervention to prevent a nation from committing atrocities against its own subjects which is itself a violation of international law. There has been, however, considerable disagreement over this latter rationale.

Intervention may be accomplished either with or without the use of force. Self-defense against armed attack or the threat of imminent attack is generally a necessary prerequisite for armed intervention. Intervention is justified under the following circumstances, which are not all inclusive:

1. To protect nations that request intervention in the face of an external threat and in certain other special cases. The intervention by the United States in the Dominican Republic in 1965 is illustrative of this circumstance.
2. In response to a request from the government of one nation for assistance in repelling threatened or attempted subversion directed by another nation. Examples of this circumstance include the U.S. and British actions in Lebanon (1958) and Jordan (1957-58), and the U.S. actions in Vietnam (1963-75) and El Salvador (1981-86).
3. A serious danger to the territory of a nation may arise either as a result of a natural catastrophe in another nation or as a result of the other nation deliberately or negligently employing its natural resources to the detriment of the first nation. For example, the reservoirs of Nation A on the upper reaches of a river might be damaged by natural forces, posing a threat to Nation B on the lower reaches. Intervention by the threatened nation (Nation B) is justified if the other nation (Nation A) is unwilling or unable to provide a timely and effective remedy. The U.N. Security Council should be immediately advised of the intervention (art. 51).
4. To protect the lives and property of a nation's citizens abroad, particularly its diplomatic personnel. State practice has tolerated the use of force to protect a nation's citizens outside its borders if the individuals were in imminent danger of irreparable harm and the nation in whose territory the individuals were located could not or would not protect them. The 1976 Israeli raid at Entebbe Airport, the 1977 West German raid at Mogadishu, Somalia, the 1980 U.S. Iranian hostage rescue attempt, the 1983 U.S. intervention in Grenada and the 1988 U.S. intervention in Panama are examples of self-defense being asserted on behalf of one nation's citizens in the territory of another.
5. In response to genocide or other compelling humanitarian circumstance. This evolving concept of humanitarian intervention has not yet attained general acceptance.

(continued...)

---

<sup>29</sup>(...continued)

See 1976 Digest of U.S. Practice in International Law 3-11; 2 Restatement (Third), sec. 905 Comment g, at 383; Ronzitti, *Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity* (1985); Dean, *Self-Determination and U.S. Support of Insurgents, A Policy-Analysis Model*, 122 Mil. L. Rev. 149 (1988); Akehurst, *Humanitarian Intervention*, in *Intervention in World Politics* 95 (Bull ed. 1984); and Teson, *Humanitarian Intervention* (1995).

The Entebbe raid is discussed in *Contemporary Practice of the U.S.*, 73 Am. J. Int'l L. 122 (1979); Salter, *Commando Coup at Entebbe: Humanitarian Intervention or Barbaric Aggression?*, 11 Int'l Lawyer 331 (1977); Boyle, *International Law in Time of Crisis: From the Entebbe Raid to the Hostages Convention*, 75 Nw. U.L. Rev. 769 (1980); Boyle, *The Entebbe Hostages Crisis*, 29 Neth. Int'l L. Rev. 32 (1982). See also Green, *Rescue at Entebbe--Legal Aspects*, 6 Isr. Y.B. Human Rights 312 (1976) and Ben-Porat, Haber & Schiff, *Entebbe Rescue* (1977).

The Iranian hostage rescue attempt is described in 78 Am. J. Int'l L. 200 (1984); U.N. Doc. S/13908, 25 April 1980; JCS Special Operations Review Group, *Rescue Mission Report*, August 1990, reprinted in *Aviation Week & Space Technology*, 15 Sep. 1980, at 61-71, 22 Sep. 1980, at 140-44, 29 Sep. 1980, at 84-91; Carter, *Keeping Faith* 506-22 (1982); Brzezinski, *Power and Principle* 487-500 (1985); Beckwith & Know, *Delta Force* (1983); Ryan, *The Iranian Rescue Mission: Why It Failed* (1985); Kyle, *The Guts to Try* (1990); Terry, *The Iranian Hostages: International Law and United States Policy*, 32 JAG J. 31 (1982); and Green, *The Tehran Embassy Incident--Legal Aspects*, 19 Archiv des Völkerrechts 1 (1980).

On United States intervention in El Salvador/Nicaragua in the 1980s, see Joyner & Grimaldi, *The United States and Nicaragua: Reflections on the Lawfulness of Contemporary Intervention*, 25 Va. J. Int'l L. 621 (1985); and Moore, *The Secret War in Central America and the Future of World Order*, 80 Am. J. Int'l L. 43-127 (1986).

The October 1983 Grenada operation is described in O'Shaughnessy, *Grenada: Revolution, Invasion and Aftermath* (1984); *The Grenada Papers* (Seabury & McDougall, eds. 1984); *American Intervention in Grenada: The Implication of Operation Urgent Fury* (Dunn & Watson eds. 1985); Spector, *U.S. Marines in Grenada* (1987); Lehman, *Command of the Seas* 291-305 (1988); Adkin, *Urgent Fury: The Battle for Grenada* (1989); Weinberger, *Fighting for Peace* 101-33 (1990); Musicant, *The Banana Wars* 370-89 (1990); Leich, *Current Practice of the United States Relating to International Law: Rescue Operation by Armed Forces--Grenada*, 78 Am. J. Int'l L. 200-04 (1984); U.N. Doc. S/16076, 25 October 1983; *The United States Action in Grenada*, 78 Am. J. Int'l L. 131-75 (1984); Moore, *Law and the Grenada Mission* (1984); Maizel, *Intervention in Grenada*, 35 JAG J. 47 (1986); and Beck, *The "McNeil Mission" and the Decision to Invade Grenada*, Nav. War Coll. Rev., Spring 1991, at 93.

The December 1989 U.S. intervention in Panama is described in Musicant, *The Banana Wars* 390-417 (1990); Briggs, *Operation Just Cause: Panama December 1989: A Soldier's Eyewitness Account* (1990); Woodward, *The Commanders* 83-195 (1991); Donnelly, Roth & Baker, *Operation Just Cause: The Storming of Panama* (1991); McConnell, *Just Cause: The Real Story of America's High-Tech Invasion of Panama* (1991); Buckley, *Panama: The Whole Story* (1992). Operation Just Cause is analyzed in Parkerson, *United States Compliance with Humanitarian Law Respecting Civilians During Operation Just Cause*, 133 Mil. L. Rev. 31 (1991); and Terry, *The Panamanian Intervention: Law in Support of Policy*, 39 Nav. L. Rev. 5 (1990).

On Operation Provide Comfort, relief to Iraqi Kurds in March 1991, see U.N. Security Council Resolution 688 (1991).

<sup>30</sup> In practice, the concepts of embargo and boycott have become blurred and have taken on a broader meaning. The terms now include preventing the import, export, movement or other dealing in goods, services or financial transactions to exert pressure on an offending nation. An embargo or boycott may be used, for example, to preclude an alleged aggressor nation from increasing its war-making potential, or to prevent the aggravation of civil strife in a nation in which it may be occurring. See 12 Whiteman 344-49. The maritime interception operations and air embargo enforced against Iraq as a consequence of its invasion of Kuwait, on 2 August 1990, are summarized in Walker, *The Crisis over Kuwait*, August 1990-February 1991, 1991 Duke J. Comp. & Int'l L. 25, 34-36. See also Joyner, *Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq*, 32 Va. J. Int'l L. 1 (1991); and Almond, *An Assessment of Economic Warfare: Developments from the Persian Gulf*, 31 Va. J. Int'l L. 645 (1991).

such concepts have continuing validity under the Charter of the United Nations, they are premised on the broader principle of self-defense.

The concept of maritime quarantine provides a case in point. Maritime quarantine was first invoked by the United States as a means of interdicting the flow of Soviet strategic missiles into Cuba in 1962. That action involved a limited coercive measure on the high seas applicable only to ships carrying offensive weaponry to Cuba and utilized the least possible military force to achieve that purpose. That action, formally ratified by the Organization of American States (OAS), has been widely approved as a legitimate exercise of the inherent right of individual and collective self-defense recognized in Article 51 of the UN Charter.<sup>31</sup>

**4.3.2.1 Anticipatory Self-Defense.** Included within the inherent right of self-defense is the right of a nation (and its armed forces) to protect itself from imminent attack. International law recognizes that it would be contrary to the purposes of the United Nations Charter if a threatened nation were required to absorb an aggressor's initial and potentially crippling first strike before taking those military measures necessary to thwart an imminent attack. Anticipatory self-defense involves the use of armed force where attack is imminent and no reasonable choice of peaceful means is available.<sup>32</sup>

---

<sup>31</sup> At the time, the U.S. Government characterized the quarantine as a sanction imposed by collective agreement pursuant to art. 52 of the U.N. Charter, and did not rely on self-defense to justify its actions. Chayes, *The Cuban Missile Crisis: International Crises and the Role of Law* (1974); Robertson, *Blockade to Quarantine*, JAG J., June 1963, at 87; McDevitt, *The UN Charter and the Cuban Quarantine*, JAG J., April-May 1963, at 71; McDougal, *The Soviet-Cuban Quarantine and Self-Defense*, 57 Am. J. Int'l L. 597 (1963); Christol & Davis, *Maritime Quarantine: The Naval Interdiction of Offensive Weapons and Associated Material to Cuba, 1962*, 57 Am. J. Int'l L. 525; Mallison, *Limited Naval Blockade or Quarantine-Interdiction: National and Collective Defense Claims Valid Under International Law*, 31 Geo. Wash. L. Rev. 335 (1962).

The 1990-91 maritime interception operations in the Persian Gulf and Red Sea by Coalition Forces to prevent Iraqi imports and exports were conducted pursuant to U.N. Security Council Resolutions 661 and 665 and art. 51 of the U.N. Charter. They are described in Carter, *Blockade*, U.S. Naval Inst. Proc., Nov. 1990, at 42; and Delery, *Away, the Boarding Party!*, U.S. Nav. Inst. Proc./Naval Review, May 1991, at 65.

<sup>32</sup> This is a departure from the treatment of this issue in NWP-9 (Rev. A) which stated:

Anticipatory self-defense involves the use of armed force where there is a clear necessity that is *instant, overwhelming, and leaving* no reasonable choice of peaceful means. [Emphasis added.]

That statement derives from U.S. Secretary of State Daniel Webster's 1841 articulation of the right to resort to self-defense as emanating from circumstances when the necessity for action is "instant, overwhelming, and leaving no choice of means, and no moment for deliberation." See *The Caroline Case*, 2 Moore 409-14, discussed in Bunn, *International Law and the Use of Force in Peacetime: Do U.S. Ships Have to Take the First Hit?*, Nav. War Coll. Rev., May-June 1986, at 70; and Jennings, *The Caroline and McLeod Cases*, 32 Am. J. Int'l L. 82 (1938). The Webster formulation is clearly too restrictive today, particularly given the nature and lethality of modern weapons systems which may be employed with little, if any, warning. Ascertaining when a modern weapons system's employment may be "instant" or "overwhelming" is at best problematical. Moreover, as noted by the Mallisons, "a credible threat may be imminent without being 'instant' and more than a 'moment for deliberation' is required to make a lawful choice of means." See Mallison & Mallison, *Naval Targeting: Lawful Objects of Attack*, in Robertson at 263. McDougal and Feliciano, in commenting on this issue, stated "the standard of required necessity has been habitually cast in language so abstractly restrictive as almost, if read literally, to impose

(continued...)

**4.3.2.2 JCS Standing Rules of Engagement (SROE).** The JCS Standing Rules of Engagement establish fundamental policies and procedures governing the actions to be taken by U.S. commanders during military operations, contingencies, or prolonged conflicts. (See also the discussion of SROE in the Preface.) At the national level, rules of engagement are promulgated by the NCA, through the Chairman of the Joint Chiefs of Staff, to the combatant commanders to guide them in the employment of their forces toward the achievement of broad national objectives.<sup>33</sup> At the tactical level, rules of engagement are task and mission-oriented. At all levels, U.S. rules of engagement are consistent with the law of armed conflict.<sup>34</sup> Because rules of engagement also reflect operational and national

---

<sup>32</sup>(...continued)

paralysis. Such is the clear import of the classical peroration of Secretary of State Webster in *The Caroline* case . . . . [T]he requirements of necessity and proportionality . . . can ultimately be subjected only to that most comprehensive and fundamental test of all law, reasonableness in particular context." McDougal & Feliciano 217-18. See also, Jessup, *A Modern Law of Nations* 163-64 (1948); Sofaer, *Terrorism, The Law, and the National Defense*, 126 *Mil. L. Rev.* 89 (1989); Joyner, *The Rabta Chemical Factory Fire: Rethinking the Lawfulness of Anticipatory Self-Defense*, 13 *Terrorism* 79 (1990); Dinstein, paragraph 4.3.2, note 25 (p. 4-10); and Lowe, *The Commander's Handbook on the Law of Naval Operations and the Contemporary Law of the Sea*, in Robertson at 127-30.

<sup>33</sup> Self-defense, in relation to the United States as a nation, is the act of defending the United States and U.S. forces from attack or threat of imminent attack. See Annex A4-3, para. 5b (p. 4-25). This concept relates to regional or global situations possibly preceding prolonged engagements and related to unstable international relations. The concept of self-defense is also invoked in confrontations between U.S. forces and foreign forces who are involved in an international armed conflict both where the United States remains neutral or is otherwise not a party to the conflict and where the United States is a party to the conflict. For a more detailed discussion of neutrality and its impact on naval operations, see Chapter 7. U.S. forces exercised national self-defense in response to Libya's attacks on U.S. forces in the Gulf of Sidra on 24-25 March 1986, and to Libya's support for international terrorism in the attacks on Tripoli and Benghazi on 14 April 1986. U.S. Letter to U.N. Security Council, 25 March 1986, U.N. Doc. S/17938, *reprinted in* Dep't St. Bull., May 1986, at 80; Presidential Letters to Congress, 26 March 1986, 22 *Weekly Comp. Pres. Doc.* 423; Presidential Letters to Congress, 16 April 1986, *reprinted in* Dep't St. Bull., June 1986, at 8; U.S. Letter to U.N. Security Council, 14 April 1986, U.N. Doc. S/17990. See also 80 *Am. J. Int'l L.* 632 (1986); Lehman, *Command of the Seas* 357-76 (1988); Weinberger, *Fighting for Peace* 175-201 (1990); Warriner, *The Unilateral Use of Coercion Under International Law: A Legal Analysis of the United States Raid on Libya on April 14, 1986*, 37 *Nav. L. Rev.* 49 (1988).

Documentation regarding the shooting down of Iran Air Flight 655 on 4 July 1988 is *reproduced in* 28 *Int'l Leg. Mat'ls* 896 (1989); 83 *Am. J. Int'l L.* 332 (1989), and *discussed in* Friedman, *The Vincennes Incident*, U.S. Nav. Inst. Proc./Naval Review, May 1989, at 72, and Hearings before the Defense Policy Panel of the House Armed Service Committee, 9 Sep. 1988. See also Linman, *Iran Air 655 and Beyond: Free Passage, Mistaken Self-Defense, and State Responsibility*, 16 *Yale J. Int'l L.* 245 (1991).

<sup>34</sup> Self-defense, in relation to a unit of U.S. naval forces, is the act of defending from attack or threat of imminent attack that unit (including elements thereof) and other U.S. forces in the vicinity, or U.S. citizens or U.S. flag vessels or other U.S. commercial assets in the vicinity of that unit. See Annex A4-3, para. 5c (p. 4-25). Generally, this concept relates to localized, low-level situations that are not preliminary to prolonged engagements. The response of two U.S. Navy F-14 aircraft to the attack by two Libyan Su-22 aircraft over the Gulf of Sidra on 14 August 1981 was an exercise of unit self-defense against a hostile force that had committed a hostile act and posed a continuing threat of immediate attack. U.N. Doc. S/17938, 25 March 1986; Neutze, *The Gulf of Sidra Incident: A Legal Perspective*, U.S. Nav. Inst. Proc., Jan 1982, at 26; Parks, *Crossing the Line*, U.S. Nav. Inst. Proc., Nov. 1986, at 40 & 43; Rather, *The Gulf of Sidra Incident of 1981: A Study of the Lawfulness of Peacetime Aerial Engagements*, 7 *Yale J. Int'l L.* 59 (1984). Similarly, the shootdown of two Libyan MiG-23s on 4 January 1989 by two F-14s over international waters of the Mediterranean Sea more than 40 miles off the eastern coast of Libya, after the MiGs repeatedly turned toward them and did not break off the intercept, was an act of unit self-defense against units demonstrating hostile intent. U.N. Doc. S/20366, 4 January 1989.

policy factors, they often restrict combat operations far more than do the requirements of international law. A full range of options is reserved to the National Command Authorities to determine the response that will be made to hostile acts and demonstrations of hostile intent. The SROE provide implementation guidance on the inherent right and obligation of self-defense and the application of force for mission accomplishment.<sup>35</sup> A principal tenet of these ROE is the commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of the commander's unit and other U.S. forces in the vicinity.<sup>36</sup>

#### 4.4 INTERCEPTION OF INTRUDING AIRCRAFT

All nations have complete and exclusive sovereignty over their national airspace (see paragraphs 1.8 and 2.5.1). With the exception of overflight in transit passage of international straits and in archipelagic sea lanes passage (see paragraphs 2.3.3 and 2.3.4.1), distress (see paragraph 3.2.2.1), and assistance entry to assist those in danger of being lost at sea (see paragraph 2.3.2.5), authorization must be obtained for any intrusion by a foreign aircraft (military or civil) into national airspace (see paragraph 2.5). That authorization may be flight specific, as in the case of diplomatic clearance for the visit of a military aircraft, or general, as in the case of commercial air navigation pursuant to the Chicago Convention.

Customary international law provides that a foreign aircraft entering national airspace without permission due to distress or navigational error may be required to comply with orders to turn back or to land. In this connection the Chicago Convention has been amended to provide, in effect:

1. That all nations must refrain from the use of weapons against civil aircraft, and, in the case of the interception of intruding civil aircraft, that the lives of persons on board and the safety of the aircraft must not be endangered. (This provision does not, however, detract from the right of self-defense recognized under Article 51 of the United Nations Charter.)

---

<sup>35</sup> Grunawalt, *The JCS Standing Rules of Engagement: A Judge Advocate's Primer*, 42 Air Force L. Rev. 245 (1997); Roach, *Rules of Engagement*, Nav. War Coll. Rev., Jan.-Feb. 1983, at 46-53, *reprinted in* 14 Syr. J. Int'l L. & Com. 865 (1988); and Hayes, *Naval Rules of Engagement: Management Tools for Crisis*, Rand Note N-2963-CC (July 1989). *See also* Fleck, *Rules of Engagement for Maritime Forces and the Limitations of the Use of Force under the UN Charter*, 31 Ger. Y.B. Int'l L. 165 (1988).

<sup>36</sup> Contact with a foreign force committing a hostile act or armed attack or displaying hostile intent or threat of armed attack against the United States, its forces, a U.S. flag vessel, U.S. citizens or their property must be reported immediately by the fastest possible means to JCS, CNO/CMC, and the appropriate unified and component commanders (OPREP-1). Where circumstances permit, guidance as to the use of armed force in defense should be sought. However, where the circumstances are such that it is impractical to await such guidance, it is the responsibility of the on-scene commander to take such measures of self-defense to protect his force as are necessary and proportional, consistent with applicable rules of engagement (*see* paragraph 4.3.2 (p. 4-10) and Annex 4-3 (p. 4-25)).

2. That all nations have the right to require intruding aircraft to land at some designated airfield and to resort to appropriate means consistent with international law to require intruding aircraft to desist from activities in violation of the Convention.
3. That all intruding civil aircraft must comply with the orders given to them and that all nations must enact national laws making such compliance by their civil aircraft mandatory.
4. That all nations shall prohibit the deliberate use of their civil aircraft for purposes (such as intelligence collection) inconsistent with the Convention.<sup>37</sup>

The amendment was approved unanimously on 10 May 1984 and will come into force upon ratification by 102 of ICAO's members in respect of those nations which have ratified it.<sup>38</sup> The Convention, by its terms, does not apply to intruding military aircraft. The U.S. takes the position that customary international law establishes similar standards of reasonableness and proportionality with respect to a nation's response to military aircraft that stray into national airspace through navigational error or that are in distress<sup>39</sup>

---

<sup>37</sup> Protocol relating to an amendment to the Convention on International Civil Aviation [Art. 3 *bis*], Montreal, 10 May 1984, *reprinted in* 23 Int'l Legal Mat'ls 705 (1984).

Para. 8.1 of Attachment A - Interception of Civil Aircraft - to Annex 2 - Rules of the Air - to the Chicago Convention provides: "The use of tracer bullets to attract attention is hazardous, and it is expected that measures will be taken to avoid their use so that the lives of persons on board and the safety of aircraft will not be endangered."

Documentation regarding the shooting down of KAL 007 is reproduced in 22 Int'l Leg. Mat'ls 1149 (1983); 23 Int'l Leg. Mat'ls 864, 924 & 937 (1984); and 78 Am. J. Int'l L. 213 (1984). *See* FitzGerald, The Use of Force against Civil Aircraft: The Aftermath of the KAL Flight 007 Incident, 22 Can. Y.B. Int'l L. 1984, at 291, 309.

<sup>38</sup> As of 4 November 1997, 90 nations have ratified the Protocol, including the United Kingdom and the Russian Federation. *See* Table A4-1 (p. 4-33). The Protocol has not been submitted to the Senate for advice and consent because of concerns about I.C.J. compulsory jurisdiction.

<sup>39</sup> AFP 110-31, para. 2-5d, at 2-6; 9 Whiteman 328. On aerial intrusions, *see* Hughes, Aerial Intrusions by Civil Airliners and the Use of Force, 45 J. Air L. & Com. 595 (1980); Hassan, A Legal Analysis of the Shooting of Korean Airlines Flight 007 by the Soviet Union, 49 J. Air L. & Com. 553 (1984); Laveson, Korean Airline Flight 007: Stalemate in International Aviation Law--A Proposal for Enforcement, 22 San Diego L. Rev. 859 (1985); Phelps, Aerial Intrusions by Civil and Military Aircraft in Time of Peace, 107 Mil. L. Rev. 255 (1985) and Schmitt, Aerial Blockades in Historical, Legal and Practical Perspective, 2 U.S.A.F.A. J. Leg. Studies 21 (1991). *See also* the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on the Prevention of Dangerous Military Activities, Moscow, 12 June 1989, *reprinted in* 28 Int'l Leg. Mat'ls 879 (1989).



## **ANNEX A4-1**

### **UNITED NATIONS PEACE-KEEPING OPERATIONS**

#### **1947**

Indonesia - United Nations Consular Commission (CC) 1947-1948.

#### **1948**

\* Middle East - United Nations Truce Supervision Organization (UNTSO) Jun 1948-date.

Greece - United Nations Special Committee on the Balkans (UNSCOB) 1948.

#### **1949**

\* India/Pakistan - United Nations Military Observer Group in India & Pakistan (UNMOGIP) Jan 1949-date.

#### **1950**

Korea - United Nations Command (UNC) 1950-1953.

#### **1955**

Suez - United Nations Emergency Force (UNEF) 1955-1967.

#### **1956**

Middle East - First United Nations Emergency Force (UNEF I) Nov 1956-Jun 1967.

#### **1958**

Lebanon - United Nations Observation Group in Lebanon (UNOGIL) Jun 1958-Dec 1958.

#### **1960**

Congo - United Nations Operations in the Congo (ONUC) Jul 1960-Jun 1964.

#### **1962**

West New Guinea - United Nations Security Force in West New Guinea (West Irian) (UNSF) Oct 1962-Apr 1963.

1963

Yemen - United Nations Yemen Observation Mission (UNYOM) Jul 1963-Sep 1964.

1964

- \* Cyprus - United Nations Peace-keeping Force in Cyprus (UNFICYP) Mar 1964-date.

1965

Dominican Republic - Mission of the Representative of the Secretary-General in the Dominican Republic (DOMREP) May 1965-Oct 1966.

India/Pakistan - United Nations India-Pakistan Observation Mission (UNIPOM) Sep 1965-Mar 1966.

1973

Middle East - Second United Nations Emergency Force (UNEF II) Oct 1973-Jul 1979.

1974

- \* Golan Heights - United Nations Disengagement Observer Force (UNDOF) Jun 1974-date.

1978

- \* Lebanon - United Nations Interior Force in Lebanon (UNIFIL) Mar 1978-date.

1988

Afghanistan/Pakistan - United Nations Good Offices Mission in Afghanistan & Pakistan (UNGOMAP) Apr 1988-Mar 1990.

Iran/Iraq - United Nations Iran-Iraq Military Observer Group (UNIIMOG) (Aug 88-Feb 91).

1989

Angola - United Nations Angola Verification Mission I (UNAVEM I) Jan 89-Jun 91.

Namibia - United Nations Transition Assistance Group (UNTAG) Apr 1989-Mar 1990.

1989 (Cont.)

Central America - United Nations Observer Group in Central America (ONUCA) Nov 1989-Jan 1992.

1991

- \* Iraq/Kuwait - United Nations Iraq-Kuwait Observation Mission (UNIKOM) Apr 1991-date.

Angola - United Nations Angola Verification Mission II (UNAVEM II) Jun 1991-Feb 1995.

El Salvador - United Nations Observer Mission in El Salvador (ONUSAL) Jul 1991-Apr 1995.

- \* Western Sahara - United Nations Mission for the Referendum in Western Sahara (MINURSO) Sep 1991-date.

Cambodia - United Nations Advance Mission in Cambodia (UNAMIC) Oct 1991-Mar 1992.

1992

Cambodia - United Nations Transitional Authority in Cambodia (UNTAC) Mar 1992-Sep 1993.

Former-Yugoslavia - United Nations Protection Force (UNPROFOR) Mar 1992-Dec 1995.

Somalia - United Nations Operation in Somalia I (UNOSOM I) Apr 1992-Mar 1993.

Mozambique - United Nations Operation in Mozambique (ONUMOZ) Dec 1992-Dec 1994.

1993

Somalia - United Nations Operation in Somalia II (UNOSOM II) Mar 1993-Mar 1995.

Rwanda/Uganda - United Nations Observer Mission Uganda-Rwanda (UNOMUR) Jun 1993-Sep 1994.

1993 (Cont.)

- \* Georgia - United Nations Observer Mission in Georgia (UNOMIG) Aug 1993-date.  
Haiti - United Nations Mission in Haiti (UNMIH) Sep 1993-Jun 1996.
- \* Liberia - United Nations Observer Mission in Liberia (UNOMIL) Sep 1993-date.  
Rwanda - United Nations Assistance Mission for Rwanda (UNAMIR) Oct 1993-Mar 1996.

1994

- Chad/Libya - United Nations Aouzou Strip Observer Group (UNASOG) May-Jun 1994.
- \* Tajikistan - United Nations Mission of Observers in Tajikistan (UNMOT) Dec 1994-date.

1995

- \* Angola - United Nations Angola Verification Mission III (UNAVEM III) Feb 1995-date.  
Croatia - United Nations Confidence Restoration Organization in Croatia (UNCRO) Mar 1995-Jan 1996.
- \* Former-Yugoslavia Republic of Macedonia - United Nations Preventive Deployment Force (UNPREDEP) Mar 1995-date.
- \* Bosnia & Herzegovina - United Nations Mission in Bosnia and Herzegovina (UNMIBH) Dec 1995-date.

1996

- \* Croatia - United Nations Mission of Observers in Prevlaka (UNMOP) Jan 1996-date.
- \* Croatia - United Nations Transitional Administration for Eastern Slovenia, Baranja and Western Sirmium (UNTAES) Jan 1996-date.
- \* Haiti - United Nations Support Mission in Haiti (UNSMIH) Jul 1996-date.

NOTE: \* Indicates an on-going operation as of 1 January 1997.

---

**Source:** U.N. Dep't of Public Information.

**ANNEX A4-2**

**PRESIDENT'S LETTER OF  
INSTRUCTION**

R 300238Z SEP 94  
FM SECSTATE WASHDC  
TO ALL DIPLOMATIC AND CONSULAR POSTS  
SPECIAL EMBASSY PROGRAM  
BT  
UNCLAS STATE 265203

**SUBJECT: PRESIDENT CLINTON'S LETTER OF INSTRUCTION TO UNITED STATES  
CHIEFS OF MISSION**

1. THIS MESSAGE TRANSMITS THE TEXT OF PRESIDENT CLINTON'S LETTER OF INSTRUCTION TO UNITED STATES CHIEFS OF MISSION (COMS), WHICH HE SIGNED ON SEPTEMBER 16. PLEASE SHARE IT WITH ALL MEMBERS OF YOUR MISSION. YOU MAY EXPECT TO RECEIVE YOUR INDIVIDUAL, SIGNED LETTER BY POUCH IN THE NEXT MONTH OR SO. QUESTIONS OR COMMENTS ON THE LETTER MAY BE ADDRESSED TO THE OFFICE OF MANAGEMENT POLICY (FMP/MP), ROOM 7427NS, 202-647-7789.

2. BEGIN TEXT.

**DEAR MR./MADAM AMBASSADOR:**

A) PLEASE ACCEPT MY BEST WISHES AND APPRECIATION FOR YOUR EFFORTS AS MY PERSONAL REPRESENTATIVE TO (COUNTRY/INTERNATIONAL ORGANIZATION).

B) WE ARE AT A MOMENT OF UNIQUE HISTORIC OPPORTUNITY FOR THE UNITED STATES AND FOR THE WORLD. WITH THE END OF THE COLD WAR, WE ARE ENTERING AN ERA SO NEW THAT IT HAS YET TO ACQUIRE A NAME. OUR TASK AS A NATION, AND YOURS AS CHIEF OF THE UNITED STATES MISSION, IS TO ENSURE THAT THIS NEW ERA IS ONE CONDUCTIVE TO AMERICAN PROSPERITY, TO AMERICAN SECURITY, AND TO THE VALUES AMERICA SEEKS TO EXEMPLIFY. TO ACCOMPLISH THIS TASK I NEED YOUR FULL SUPPORT FOR THE THREE GOALS OF MY FOREIGN POLICY THAT AIM TO KEEP OUR NATION STRONG AT HOME AND ABROAD: RENEWING AND ADAPTING AMERICA'S SECURITY ALLIANCES AND STRUCTURES; REBUILDING AND REVITALIZING THE AMERICAN ECONOMY; AND PROMOTING DEMOCRACY, HUMAN RIGHTS, AND SUSTAINABLE DEVELOPMENT.

C) YOU SHOULD GIVE SPECIAL ATTENTION IN THE SECURITY REALM TO HALTING ARMS PROLIFERATION, PREVENTING, RESOLVING, AND CONTAINING CONFLICT, AND TO COUNTERING TERRORISM AND INTERNATIONAL CRIME; AND IN THE ECONOMIC ARENA, TO OPENING AND EXPANDING MARKETS FOR AMERICA'S EXPORTS. NO COUNTRY CAN BE EXEMPT FROM UPHOLDING THE BASIC PRINCIPLES IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS; ALL SHOULD UNDERSTAND THAT SHARED DEMOCRATIC VALUES ARE THE MOST RELIABLE FOUNDATION FOR GOOD RELATIONS WITH THE UNITED STATES. FINALLY, I WILL NEED YOUR HELP AS MY ADMINISTRATION SEEKS TO PROMOTE INTERNATIONAL COOPERATION TO ADDRESS GLOBAL PROBLEMS INCLUDING THE ENVIRONMENT AND POPULATION, NARCOTICS PRODUCTION AND TRAFFICKING, REFUGEES, MIGRATION, AND HUMANITARIAN ASSISTANCE.

D) ACHIEVING THESE GOALS WILL DEMAND A DYNAMIC DIPLOMACY THAT HARNESSSES CHANGE IN THE SERVICE OF OUR NATIONAL INTERESTS AND VALUES. IT WILL REQUIRE US TO MEET THREATS TO OUR SECURITY AND PRACTICE PREVENTIVE DIPLOMACY, AND TO ANTICIPATE THREATS TO OUR INTERESTS AND TO PEACE IN THE WORLD BEFORE THEY BECOME CRISES AND DRAIN OUR HUMAN AND MATERIAL RESOURCES IN WASTEFUL WAYS. I HAVE ASKED YOU TO REPRESENT THE UNITED STATES IN (COUNTRY)/AT (INTERNATIONAL ORGANIZATION) BECAUSE I AM CONFIDENT THAT YOU POSSESS THE SKILLS, DEDICATION, AND EXPERIENCE NECESSARY TO MEET THE MANY CHALLENGES THAT THIS NEW AND COMPLEX ERA PRESENTS. THIS LETTER OUTLINES YOUR PRINCIPAL AUTHORITIES AND RESPONSIBILITIES. I HAVE INFORMED ALL DEPARTMENT AND AGENCY HEADS OF THESE INSTRUCTIONS, AND I KNOW YOU WILL RECEIVE THEIR FULL SUPPORT.

E) I CHARGE YOU TO EXERCISE YOUR AUTHORITY WITH WISDOM, JUSTICE, AND IMAGINATION. DRAMATIC CHANGE ABROAD AND AUSTERITY HERE AT HOME HAVE PUT A PREMIUM ON LEADERSHIP AND TEAMWORK. CAREFUL STEWARDSHIP OF YOUR MISSION'S RESOURCES STANDS IN THE FOREFRONT OF YOUR RESPONSIBILITIES. I URGE YOU TO SEE BUDGETARY STRINGENCY NOT AS A HARDSHIP TO BE ENDURED BUT AS AN INCENTIVE TO INNOVATION.

F) AS MY REPRESENTATIVE, YOU, WITH THE SECRETARY OF STATE, ASSIST ME IN THE IMPLEMENTATION OF MY CONSTITUTIONAL RESPONSIBILITIES FOR THE CONDUCT OF OUR RELATIONS WITH (COUNTRY/INTERNATIONAL ORGANIZATION). I CHARGE YOU TO EXERCISE FULL RESPONSIBILITY FOR THE DIRECTION, COORDINATION, AND SUPERVISION OF ALL EXECUTIVE BRANCH OFFICES AND PERSONNEL IN (COUNTRY)/AT (INTERNATIONAL ORGANIZATION), EXCEPT FOR PERSONNEL UNDER THE COMMAND OF A U.S. AREA

MILITARY COMMANDER, UNDER ANOTHER CHIEF OF MISSION IN (COUNTRY) OR ON THE STAFF OF AN INTERNATIONAL ORGANIZATION. THIS ENCOMPASSES ALL AMERICAN AND FOREIGN NATIONAL PERSONNEL, IN ALL EMPLOYMENT CATEGORIES, WHETHER DIRECT HIRE OR CONTRACT, FULL- OR PART-TIME, PERMANENT OR TEMPORARY.

G) ALL EXECUTIVE BRANCH PERSONNEL UNDER YOUR AUTHORITY MUST KEEP YOU FULLY INFORMED AT ALL TIMES OF THEIR CURRENT AND PLANNED ACTIVITIES, SO THAT YOU CAN EFFECTIVELY CARRY OUT YOUR RESPONSIBILITY FOR U.S. GOVERNMENT PROGRAMS AND OPERATIONS. YOU HAVE THE RIGHT TO SEE ALL COMMUNICATIONS TO OR FROM MISSION ELEMENTS, HOWEVER TRANSMITTED, EXCEPT THOSE SPECIFICALLY EXEMPTED BY LAW OR EXECUTIVE DECISION.

H) AS COMMANDER IN CHIEF, I RETAIN AUTHORITY OVER U.S. ARMED FORCES. ON MY BEHALF YOU HAVE RESPONSIBILITY FOR THE DIRECTION, COORDINATION, SUPERVISION, AND SAFETY, INCLUDING SECURITY FROM TERRORISM, OF ALL DEPARTMENT OF DEFENSE PERSONNEL ON OFFICIAL DUTY (IN (COUNTRY)/AT (INTERNATIONAL ORGANIZATION)), EXCEPT THOSE PERSONNEL UNDER THE COMMAND OF A U.S. AREA MILITARY COMMANDER. YOU AND SUCH COMMANDERS MUST KEEP EACH OTHER CURRENTLY INFORMED AND COOPERATE ON ALL MATTERS OF MUTUAL INTEREST. ANY DIFFERENCES THAT CANNOT BE RESOLVED IN THE FIELD SHOULD BE REPORTED BY YOU TO THE SECRETARY OF STATE; AREA MILITARY COMMANDERS SHOULD REPORT TO THE SECRETARY OF DEFENSE.

I) EVERY EXECUTIVE BRANCH AGENCY UNDER YOUR AUTHORITY, INCLUDING THE DEPARTMENT OF STATE, MUST OBTAIN YOUR APPROVAL TO CHANGE THE SIZE, COMPOSITION, OR MANDATE OF ITS STAFF. USE THIS AUTHORITY TO RESHAPE YOUR MISSION IN WAYS THAT DIRECTLY SERVE AMERICAN INTERESTS AND VALUES. . . .

J) THE SECRETARY OF STATE IS MY PRINCIPAL FOREIGN POLICY ADVISER. UNDER MY DIRECTION, HE IS, TO THE FULLEST EXTENT PROVIDED BY THE LAW, RESPONSIBLE FOR THE OVERALL COORDINATION AND SUPERVISION OF U.S. GOVERNMENT ACTIVITIES ABROAD. THE ONLY AUTHORIZED CHANNEL FOR INSTRUCTIONS TO YOU IS THROUGH HIM OR FROM ME. . . .

K) THE SECRETARY OF STATE AND, BY EXTENSION, CHIEFS OF MISSION ABROAD MUST PROTECT ALL U.S. GOVERNMENT PERSONNEL ON OFFICIAL DUTY ABROAD (OTHER THAN THOSE PERSONNEL UNDER THE COMMAND OF A U.S. AREA MILITARY COMMANDER) AND THEIR ACCOMPANYING

DEPENDENTS. I EXPECT YOU TO TAKE DIRECT RESPONSIBILITY FOR THE SECURITY OF YOUR MISSION. I ALSO EXPECT YOU TO SUPPORT STRONGLY APPROPRIATE COUNTERINTELLIGENCE AND COUNTERTERRORISM ACTIVITIES THAT ENHANCE SECURITY BOTH LOCALLY AND IN THE BROADER INTERNATIONAL CONTEXT.

L) YOU SHOULD COOPERATE FULLY WITH PERSONNEL OF THE U.S. LEGISLATIVE AND JUDICIAL BRANCHES IN (COUNTRY)/AT (INTERNATIONAL ORGANIZATION) SO THAT U.S. FOREIGN POLICY GOALS ARE ADVANCED, SECURITY IS MAINTAINED AND EXECUTIVE, LEGISLATIVE, AND JUDICIAL RESPONSIBILITIES ARE CARRIED OUT.

M) AS CHIEF OF MISSION YOU ARE NOT ONLY MY REPRESENTATIVE IN (COUNTRY/INTERNATIONAL ORGANIZATION) BUT A SERVANT OF THE PEOPLE OF OUR NATION. THIS IS BOTH A HIGH HONOR AND A GREAT RESPONSIBILITY. I EXPECT YOU TO DISCHARGE THIS TRUST WITH PROFESSIONAL EXCELLENCE, THE HIGHEST STANDARDS OF ETHICAL CONDUCT, AND DIPLOMATIC DISCRETION. . . .

N) ALWAYS KEEP IN MIND THAT, FOR THE GOVERNMENT AND PEOPLE OF (COUNTRY)/THE SECRETARIAT AND OTHER REPRESENTATIVES TO (INTERNATIONAL ORGANIZATION), YOU AND YOUR MISSION SYMBOLIZE THE UNITED STATES OF AMERICA AND ITS VALUES. NEVER FORGET THE SOLEMN DUTY THAT WE, AS PUBLIC SERVANTS, OWE TO THE CITIZENS OF AMERICA—THE ACTIVE PROTECTION AND PROMOTION OF THEIR WELL-BEING, SAFETY, AND IDEALS. THERE IS NO BETTER DEFINITION OF AMERICAN NATIONAL INTEREST AND NO LOFTIER OBJECT FOR OUR EFFORTS.

SINCERELY,  
(SIGNED)  
BILL CLINTON

END TEXT.  
BT



## ANNEX A4-3

### JOINT CHIEFS OF STAFF STANDING RULES OF ENGAGEMENT (SROE)

-----  
[NOTE: This annex is a reprint of Enclosure A, Chairman, JCS Instruction 3121.01 (1 Oct 94), which is the unclassified portion of that instruction. Within Enclosure A, there are references to its Appendix A as well as to Enclosures B and C and the Glossary of the CJSC instruction. However, those referenced documents are classified and are not reproduced here.]

#### STANDING RULES OF ENGAGEMENT FOR US FORCES

##### 1. *Purpose and Scope.*

a. The purpose of these SROE is to provide implementation guidance on the inherent right and obligation of self-defense and the application of force for mission accomplishment. The SROE establish fundamental policies and procedures governing the actions to be taken by U.S. force commanders during all military operations, contingencies, or prolonged conflicts. In order to provide uniform training and planning capabilities, this document is authorized for distribution to commanders at all levels to be used as fundamental guidance for training and directing their forces.

b. Except as augmented by supplemental rules of engagement for specific operations, missions, or projects, the policies and procedures established herein remain in effect until rescinded.

##### c. U.S. forces operating with multinational forces:

(1) U.S. forces assigned to the operational control (OPCON) of a multinational force will follow the ROE of the multinational force unless otherwise directed by the National Command Authorities (NCA). U.S. forces will be assigned and remain OPCON to a multinational force only if the combatant commander and higher authority determine that the ROE for that multinational force are consistent with the policy guidance on unit self-defense and with the rules for individual self-defense contained in this document.

(2) When U.S. forces, under U.S. OPCON, operate in conjunction with a multinational force, reasonable efforts will be made to effect common ROE. If such ROE cannot be established, U.S. forces will exercise the right and obligation of self-defense contained in this document while seeking guidance from the appropriate combatant command. To avoid mutual interference, the multinational forces will be informed prior to U.S. participation in the operation of the U.S. forces' intentions to operate under these SROE and

to exercise unit self-defense. For additional guidance concerning peace operations, see Appendix A to Enclosure A.

(3) Participation in multinational operations may be complicated by varying national obligations derived from international agreements, i.e., other members in a coalition may not be signatories to treaties that bind the United States, or they may be bound by treaties to which the United States is not a party. U.S. forces still remain bound by U.S. treaty obligations even if the other members in a coalition are not signatories to a treaty and need not adhere to its terms.

d. Commanders of U.S. forces subject to international agreements governing their presence in foreign countries (e.g., Status of Forces Agreements) are not relieved of the inherent authority and obligation to use all necessary means available and to take all appropriate action for unit self-defense.

e. U.S. forces in support of operations not under operational or tactical control of a combatant commander or performing missions under direct control of the NCA, Military Departments, or other U.S. government departments/agencies (i.e., marine security guards, certain special security forces) will operate under use-of-force or ROE promulgated by those departments or agencies.

f. U.S. Coast Guard (USCG) units and units under USCG OPCON conducting law enforcement operations, and USCG personnel using their law enforcement authority, will follow the use-of-force policy issued by the Commandant, USCG. Nothing in the USCG use-of-force policy negates a commander's inherent authority and obligation to use all necessary means available and to take all appropriate action for unit self-defense in accordance with these SROE.

g. The guidance in this document does not cover U.S. forces deployed to assist federal and local authorities during times of civil disturbance within the territorial jurisdiction of any state, the District of Columbia, Commonwealths of Puerto Rico and the Northern Marianas, U.S. possessions, and U.S. territories. Forces in these situations will follow use-of-force policy found in DOD Civil Disturbance Plan, "Garden Plot" (Appendix 1 to Annex C of Garden Plot).

h. U.S. forces deployed to assist foreign, federal, and local authorities in disaster assistance missions, such as earthquakes and hurricanes, will follow use-of-force guidelines as set forth in the mission's execute order and subsequent orders.

i. U.S. forces will always comply with the Law of Armed Conflict. However, not all situations involving the use of force are armed conflicts under international law. Those approving operational rules of engagement must determine if the internationally recognized

Law of Armed Conflict applies. In those circumstances when armed conflict, under international law, does not exist, Law of Armed Conflict principles may, nevertheless, be applied as a matter of national policy. If armed conflict occurs, the actions of U.S. forces will be governed by both the Law of Armed Conflict and rules of engagement.

**2. Policy.**

a. THESE RULES DO NOT LIMIT A COMMANDER'S INHERENT AUTHORITY AND OBLIGATION TO USE ALL NECESSARY MEANS AVAILABLE AND TO TAKE ALL APPROPRIATE ACTION IN SELF-DEFENSE OF THE COMMANDER'S UNIT AND OTHER U.S. FORCES IN THE VICINITY.

b. U.S. national security policy serves to protect the United States, U.S. forces, and, in certain circumstances, U.S. citizens and their property, U.S. commercial assets, and other designated non-U.S. forces, foreign nationals, and their property from hostile attack. U.S. national security policy is guided, in part, by the need to maintain a stable international environment compatible with U.S. national security interests. In addition, U.S. national security interests guide our global objectives of deterring armed attack against the United States across the range of military operations, defeating an attack should deterrence fail, and preventing or neutralizing hostile efforts to intimidate or coerce the United States by the threat or use of armed force or terrorist actions. Deterrence requires clear and evident capability and resolve to fight at any level of conflict and, if necessary, to increase deterrent force capabilities and posture deliberately so that any potential aggressor will assess its own risks as unacceptable. U.S. policy, should deterrence fail, provides flexibility to respond to crises with options that:

- (1) Are proportional to the provocation.
- (2) Are designed to limit the scope and intensity of the conflict.
- (3) Will discourage escalation.
- (4) Will achieve political and military objectives.

**3. Intent.** These SROE are intended to:

a. Provide general guidelines on self-defense and are applicable worldwide to all echelons of command.

b. Provide guidance governing the use of force consistent with mission accomplishment.

c. Be used in operations other than war, during transition from peacetime to armed conflict or war, and during armed conflict in the absence of superseding guidance.

4. *Combatant Commanders' SROE.*

a. Combatant commanders may augment these SROE as necessary to reflect changing political and military policies, threats, and missions specific to their AOR. When specific standing rules governing the use of force in a combatant commander's AOR are required that are different from these SROE, they will be submitted to the Chairman of the Joint Chiefs of Staff for NCA approval as necessary and promulgated by the Joint Staff as an Annex to Enclosure C of these SROE.

b. Combatant commanders will distribute these SROE to subordinate commanders and units for compliance. The mechanism for disseminating ROE supplemental measures is set forth in Enclosure B.

5. *Definitions.*

a. *Inherent Right of Self-Defense.* A commander has the authority and obligation to use all necessary means available and to take all appropriate action to defend that commander's unit and other U.S. forces in the vicinity from a hostile act or demonstrated hostile intent. Neither these rules nor the supplemental measures activated to augment these rules limit this inherent right and obligation. At all times, however, the requirements of necessity and proportionality as amplified in these SROE will be the basis for the judgment of the commander as to what constitutes an appropriate response to a particular hostile act or demonstration of hostile intent.

b. *National Self-Defense.* National self-defense is the act of defending the United States, U.S. forces, and, in certain circumstances, U.S. citizens and their property, U.S. commercial assets, and other designated non-U.S. forces, foreign nationals and their property, from a hostile act or hostile intent. Once a force or terrorist unit is declared hostile by appropriate authority exercising the right and obligation of national self-defense (see paragraph 2 of Appendix A to Enclosure A), individual U.S. units do not need to observe a hostile act or determine hostile intent before engaging that force.

NOTE: *Collective Self-Defense*, as a subset of national self-defense, is the act of defending other designated non-U.S. forces, personnel and their property from a hostile act or demonstration of hostile intent. Only the NCA may authorize U.S. forces to exercise collective self-defense.

c. *Unit Self-Defense.* Unit self-defense is the act of defending a particular unit of U.S. forces, including elements or personnel thereof, and other U.S. forces in the vicinity, against a hostile act or hostile intent. The need to exercise unit self-defense may arise in many situations such as localized low-level conflicts, humanitarian efforts, peace enforcement actions, terrorist response, or prolonged engagements. Individual self-defense is a subset of unit self-defense: see the Glossary for a definition of individual self-defense.

d. *Elements of Self-Defense.* The application of armed force in self-defense requires the following two elements:

(1) *Necessity.* A hostile act occurs or a force or terrorist unit exhibits hostile intent.

(2) *Proportionality.* The force used must be reasonable in intensity, duration, and magnitude, based on all facts known to the commander at the time, to decisively counter the hostile act or hostile intent and to ensure the continued safety of U.S. forces.

e. *Hostile Act.* A hostile act is an attack or other use of force by a foreign force or terrorist unit (organization or individual) against the United States, U.S. forces, and in certain circumstance, U.S. citizens, their property, U.S. commercial assets, and other designated non-U.S. forces, foreign nationals and their property. It is also force used directly to preclude or impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel and U.S. government property. When a hostile act is in progress, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat. (See definitions in the Glossary for amplification.)

f. *Hostile Intent.* Hostile intent is the threat of imminent use of force by a foreign force or terrorist unit (organization or individual) against the United States, U.S. forces, and in certain circumstances, U.S. citizens, their property, U.S. commercial assets, or other designated non-U.S. forces, foreign nationals and their property. When hostile intent is present, the right exists to use proportional force, including armed force, in self-defense by all necessary means available to deter or neutralize the potential attacker or, if necessary, to destroy the threat. (See definitions in the Glossary for amplification.)

g. *Hostile Force.* Any force or terrorist unit (civilian, paramilitary, or military), with or without national designation, that has committed a hostile act, demonstrated hostile intent, or has been declared hostile.

6. *Declaring Force Hostile.* Once a force is declared hostile by appropriate authority, U.S. units need not observe a hostile act or a demonstration of hostile intent before engaging that force. The responsibility for exercising the right and obligation of national self-defense and declaring a force hostile is a matter of the utmost importance demanding considerable

judgement of command. All available intelligence, the status of international relationships, the requirements of international law, the possible need for a political decision, and the potential consequences for the United States must be carefully weighed. Exercising the right and obligation of national self-defense by competent authority is in addition to and does not supplant the right and obligation to exercise unit self-defense. The authority to declare a force hostile is limited as amplified in Appendix A to Enclosure A.

#### 7. *Authority to Exercise Self-Defense.*

a. *National Self-Defense.* The authority to exercise national self-defense is outlined in Appendix A to Enclosure A.

b. *Collective Self-Defense.* Only the NCA may authorize the exercise of collective self-defense.

c. *Unit Self-Defense.* A unit commander has the authority and obligation to use all necessary means available and to take all appropriate action to defend the unit, including elements and personnel thereof, or other U.S. forces in the vicinity, against a hostile act or hostile intent. In defending against a hostile act or hostile intent under these SROE, unit commanders should use only that degree of force necessary to decisively counter the hostile intent and to ensure the continued safety of U.S. forces.

#### 8. *Action in Self-Defense.*

a. *Means of Self-Defense.* All necessary means available and all appropriate actions may be used in self-defense. The following guidelines apply for unit or national self-defense:

(1) *Attempt to Control Without the Use of Force.* The use of force is normally a measure of last resort. When time and circumstances permit, the potentially hostile force should be warned and given the opportunity to withdraw or cease threatening actions. (See Appendix A to Enclosure A for amplification.)

(2) *Use Proportional Force to Control the Situation.* When the use of force in self-defense is necessary, the nature, duration, and scope of the engagement should not exceed that which is required to decisively counter the hostile act or hostile intent and to ensure the continued safety of U.S. forces or other protected personnel or property.

(3) *Attack to Disable or Destroy.* An attack to disable or destroy a hostile force is authorized when such action is the only prudent means which a hostile act or hostile intent can be prevented or terminated. When such conditions exist, engagement is authorized only until the hostile force no longer poses an imminent threat.

b. *Immediate Pursuit of Hostile Foreign Forces.* In self-defense, U.S. forces may pursue and engage a hostile force that has committed a hostile act or demonstrated hostile intent and that remains an imminent threat. (See Appendix A to Enclosure A for amplification.)

c. *Defending U.S. Citizens, Property, and Designated Foreign Nationals.*

(1) *Within a Foreign Nation's U.S. Recognized Territory or Territorial Airspace.* A foreign nation has the principal responsibility for defending U.S. citizens and property within these areas. (See Appendix A to Enclosure A for amplification.)

(2) *At Sea.* Detailed guidance is contained in Annex A to Appendix B of this enclosure.

(3) *In International Airspace.* Protecting civil aircraft in international airspace is principally the responsibility of the nation of registry. Guidance for certain cases of actual or suspected hijacking of airborne U.S. or foreign civil aircraft is contained in MCM-102-92, 24 July 1992, Hijacking of Civil Aircraft.

(4) *Terrorism.* Terrorist attacks are usually undertaken by civilian or paramilitary organizations, or by individuals under circumstances in which a determination of hostile intent may be difficult. The definitions of hostile act and hostile intent set forth above will be used in situations where terrorist attacks are likely. The term "hostile force" includes terrorist units when used in this document. When circumstances and intelligence dictate, supplemental ROE will be used to meet this special threat.

(5) *Piracy.* Piracy is defined as an illegal act of violence, depredation (i.e., plundering, robbing, or pillaging), or detention in or over international waters committed for private ends by the crew or passengers of a private ship or aircraft against another ship or aircraft or against persons or property on board such ship or aircraft. U.S. warships and aircraft have an obligation to repress piracy on or over international waters directed against any vessel, or aircraft, whether U.S. or foreign flagged. If a pirate vessel or aircraft fleeing from pursuit proceeds into the territorial sea, archipelagic waters, or superjacent airspace of another country every effort should be made to obtain the consent of nation sovereignty to continue pursuit. Where circumstances permit, commanders will seek guidance from higher authority before using armed force to repress an act of piracy.

d. *Operations Within or in the Vicinity of Hostile Fire or Combat Zones Not Involving the United States.*

(1) U.S. forces should not enter, or remain in, a zone in which hostilities (not involving the United States) are imminent or occurring between foreign forces unless directed by proper authority.

(2) If a force commits a hostile act or demonstrates hostile intent against U.S. forces in a hostile fire or combat zone, the commander is obligated to act in unit self-defense in accordance with SROE guidelines.

e. *Right of Assistance Entry.*

(1) Ships, or under certain circumstances aircraft, have the right to enter a foreign territorial sea or archipelagic waters and corresponding airspace without the permission of the coastal or island state to engage in legitimate efforts to render emergency assistance to those in danger or distress from perils of the sea.

(2) Right of assistance extends only to rescues where the location of those in danger is reasonably well known. It does not extend to entering the territorial sea, archipelagic waters, or national airspace to conduct a search.

(3) For ships and aircraft rendering assistance on scene, the right and obligation of self-defense extends to and includes persons, vessels, or aircraft being assisted. The right of self-defense in such circumstances does not include interference with legitimate law enforcement actions of a coastal nation. However, once received on board the assisting ship or aircraft, persons assisted will not be surrendered to foreign authority unless directed by the NCA.

(4) Further guidance for the exercise of the right of assistance entry is contained in CJCS Instruction 2410.01, 20 July 1993, "Guidance for the Exercise of Right of Assistance Entry."



TABLE A4-1

**STATES WHICH HAVE RATIFIED  
THE PROTOCOL RELATING TO AN AMENDMENT TO THE  
CONVENTION ON INTERNATIONAL CIVIL AVIATION**

**ARTICLE 3 *bis*, SIGNED AT MONTREAL ON 10 MAY 1984  
(As of 4 November 1997)**

Barbados	23 Nov 1984	Niger	8 Apr 1988
Chile	26 Nov 1984	Ecuador	22 Apr 1988
Austria	11 Jan 1985	Guyana	2 May 1988
Oman	21 Feb 1985	Antigua and Barbuda	17 Oct 1988
Republic of Korea	27 Feb 1985	Gabon	1 Nov 1988
Tunisia	29 Apr 1985	Colombia	10 Mar 1989
Senegal	2 May 1985	Cyprus	5 Jul 1989
Luxembourg	10 May 1985	Mauritius	7 Nov 1989
Ethiopia	22 May 1985	Bahrain	7 Feb 1990
Pakistan	10 Jun 1985	Hungary	24 May 1990
South Africa	28 Jun 1985	Mexico	20 Jun 1990
Togo	5 Jul 1985	Morocco	19 Jul 1990
Nigeria	8 Jul 1985	Russian Federation	24 Aug 1990
Thailand	12 Jul 1985	Ireland	19 Sep 1990
Egypt	1 Aug 1985	Qatar	23 Oct 1990
Seychelles	8 Aug 1985	Malawi	13 Dec 1990
France	19 Aug 1985	Portugal	17 Jun 1991
Belgium	20 Sep 1985	Burundi	10 Oct 1991
Denmark	16 Oct 1985	Finland	18 Dec 1991
Norway	16 Oct 1985	Estonia	21 Aug 1992
Sweden	16 Oct 1985	Fiji	21 Sep 1992
Spain	24 Oct 1985	Papua New Guinea	5 Oct 1992
Switzerland	24 Feb 1986	Monaco	27 Jan 1993
Bangladesh	3 Jun 1986	Turkmenistan	14 Apr 1993
Italy	12 Jun 1986	Czech Republic	15 Apr 1993
Kuwait	18 Jul 1986	Uzbekistan	24 Feb 1994
Saudi Arabia	21 Jul 1986	Malta	25 Mar 1994
Australia	10 Sep 1986	Croatia	6 May 1994
Madagascar	10 Sep 1986	Eritrea	27 May 1994
Canada	23 Sep 1986	Iran	17 Jun 1994
Jordan	8 Oct 1986	Lebanon	14 Dec 1994
Argentina	1 Dec 1986	San Marino	3 Feb 1995
Netherlands	18 Dec 1986	Slovakia	20 Mar 1995
Brazil	21 Jan 1987	Uganda	7 Jul 1995
United Arab Emirates	18 Feb 1987	Kenya	5 Oct 1995
Mali	4 Mar 1987	Germany	2 Jul 1996
Panama	22 May 1987	Belarus	24 Jul 1996
Côte d'Ivoire	5 Jun 1987	Libya	28 Oct 1996
United Kingdom	21 Aug 1987	Maldives	8 Apr 1997
Uruguay	11 Sep 1987	Bosnia & Herzegovina	9 May 1997
Guatemala	18 Sep 1987	Moldova	20 Jun 1997
Greece	26 Oct 1987	Ghana	15 Jul 1997
Nepal	26 Oct 1987	China	23 Jul 1997
Cameroon	28 Jan 1988	Belize	24 Sep 1997
Lesotho	17 Mar 1988	Israel	30 Sep 1997

**Source:** International Civil Aviation Organization, Legal Bureau, Montreal.